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# HOUSE BILL No. 1540

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-9-41.

**Synopsis:** Monroe County food and beverage tax. Permits Monroe County to impose a county food and beverage tax of 1% of the gross retail income received by a food and beverage merchant. Provides for the distribution of county food and beverage tax revenue. Establishes a local advisory commission to assist and coordinate efforts of the county and city fiscal bodies regarding the utilization of food and beverage tax revenue.

**Effective:** Upon passage.

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**Welch, Pierce**

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January 16, 2009, read first time and referred to Committee on Ways and Means.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE BILL No. 1540

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-9-41 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON  
3 PASSAGE]:

4 **Chapter 41. Monroe County Food and Beverage Tax**

5 **Sec. 1. This chapter applies to Monroe County.**

6 **Sec. 2. Except as provided in sections 3, 4, and 9(b) of this**  
7 **chapter, the definitions in IC 6-9-12-1 and IC 36-1-2 apply**  
8 **throughout this chapter.**

9 **Sec. 3. As used in this chapter, "city" means the city of**  
10 **Bloomington.**

11 **Sec. 4. As used in this chapter, "county" means Monroe County.**

12 **Sec. 5. (a) The fiscal body of the county may adopt an ordinance**  
13 **to impose an excise tax, known as the county food and beverage**  
14 **tax, on those transactions described in section 6 of this chapter.**  
15 **The effective date of an ordinance adopted under this subsection**  
16 **must be after December 31, 2009.**

17 **(b) If the fiscal body adopts an ordinance under subsection (a),**

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the fiscal body shall immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

(c) If the fiscal body adopts an ordinance under subsection (a), the county food and beverage tax applies to transactions that occur after the last day of the month that succeeds the month in which the ordinance is adopted.

Sec. 6. (a) Except as provided in subsection (c), a tax imposed under section 5 of this chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

(1) for consumption at a location, or on equipment, provided by a retail merchant;

(2) in the county in which the tax is imposed; and

(3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

(1) served by a retail merchant off the merchant's premises;

(2) food sold in a heated state or heated by a retail merchant;

(3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or

(4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) The county food and beverage tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

Sec. 7. The county food and beverage tax imposed on a food or beverage transaction described in section 6 of this chapter equals one percent (1%) of the gross retail income received by the merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from such a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 8. If an ordinance is not adopted under section 9 of this

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chapter, the tax that may be imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed for the payment of the tax under this chapter may be made separately or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department of state revenue.

Sec. 9. (a) The county fiscal body may adopt an ordinance to require that the tax be reported on forms approved by the county treasurer and that the tax shall be paid monthly to the county treasurer. If such an ordinance is adopted, the tax shall be paid to the county treasurer not more than twenty (20) days after the end of the month the tax is collected. If such an ordinance is not adopted, the tax shall be imposed, paid, and collected in exactly the same manner as the state gross retail tax is imposed, paid, and collected under IC 6-2.5.

(b) If an ordinance is adopted under this section, all of the provisions of IC 6-2.5 relating to rights, duties, liabilities, procedures, penalties, definitions, exemptions, and administration apply to the imposition and administration of the tax imposed under section 5 of this chapter, except to the extent those provisions are in conflict or inconsistent with the specific provisions of this chapter or the requirements of the county treasurer.

(c) Specifically and not in limitation of this subsection, the terms "person" and "gross income" have the same meaning in this section as set forth in IC 6-2.5, except that "person" does not include state supported educational institutions. If the tax is paid to the department of state revenue, the returns to be filed for the payment of the tax under this section may be either a separate return or may be combined with the return filed for the payment of the state gross retail tax as the department of state revenue may by rule determine.

Sec. 10. If an ordinance is not adopted under section 5 of this chapter, the amounts received from the county food and beverage tax imposed under this chapter shall be paid monthly by the treasurer of state to the county treasurer upon warrants issued by the auditor of state.

Sec. 11. (a) If an ordinance is adopted under section 5 of this chapter, the county treasurer shall establish a food and beverage tax receipts fund.

(b) The county treasurer shall deposit in the fund county food

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and beverage tax revenue that the county treasurer receives.

(c) Any money earned from the investment of money in the fund becomes part of the fund.

(d) Money in the fund at the end of the county fiscal year does not revert to the county general fund.

Sec. 12. (a) If an ordinance is adopted under section 5 of this chapter, the fiscal officer of the city shall establish a food and beverage tax receipts fund.

(b) The fiscal officer shall deposit in the fund county food and beverage tax revenue that the fiscal officer receives.

(c) Any money earned from the investment of money in the fund becomes part of the fund.

(d) Money in the fund at the end of the city fiscal year does not revert to the city general fund.

Sec. 13. (a) Each month, the county auditor shall distribute the county food and beverage tax revenue received by the county treasurer between the city and the county according to the location where the county food and beverage tax was collected. If the county food and beverage tax is collected in the city, the city must receive the revenue. If the county food and beverage tax is collected in the part of the county that is outside the city, the county must receive the revenue.

(b) Distribution of county food and beverage tax revenue to the city must be on warrants issued by the county auditor.

Sec. 14. The county's share of county food and beverage tax revenue deposited in the county food and beverage tax receipts fund may only be used to finance, refinance, construct, operate, or maintain, a convention center, a conference center, or related tourism or economic development projects.

Sec. 15. Money deposited in the city food and beverage tax receipts fund may only be used to finance, refinance, construct, operate, or maintain a convention center, a conference center, or related tourism or economic development projects.

Sec. 16. (a) In order to coordinate and assist efforts of the county and city fiscal bodies regarding the utilization of food and beverage tax receipts, an advisory commission shall be composed of the following individuals:

(1) Three (3) members who are owners of retail facilities that sell food or beverages subject to the county food and beverage tax imposed under this chapter appointed by the city and county executive.

(2) The president of the county executive.

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1           (3) A member of the county fiscal body appointed by the  
2           members of the county fiscal body.

3           (4) The city executive.

4           (5) A member of the city legislative body appointed by the  
5           members of the city legislative body.

6           (b) The county and city legislative bodies must request the  
7           commission's recommendations for the expenditure of any food  
8           and beverage tax funds collected under this chapter. The county or  
9           city legislative body may not adopt any ordinance or resolution  
10          requiring the expenditure of food and beverage tax collected under  
11          this chapter without the approval, in writing, of a majority of the  
12          members of the advisory commission.

13          SECTION 2. [EFFECTIVE UPON PASSAGE] A large percentage  
14          of the land in the city of Bloomington and in Monroe County is not  
15          taxable because the land is owned by the state or the federal  
16          government, which puts the city and the county at a disadvantage  
17          in their ability to fund projects. These special circumstances  
18          require legislation particular to the city and county.

19          SECTION 3. An emergency is declared for this act.

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